

EXHIBIT 111

VT Department of Health (Ann Rugg)
Montpelier, VT

December 15, 2008

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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In Re: PHARMACEUTICAL INDUSTRY)
AVERAGE WHOLESALE PRICE LITIGATION)
-----X MDL No. 1456
THIS DOCUMENT RELATES TO:) Master File No.
United States of America ex rel.) 01-CV-12257-PBS
Ven-A-Care of the Florida Keys, Inc.,)
et al. v. Dey, Inc., et al.,)
Civil Action No. 05-11084-PBS,) Hon. Patti B.
and United States of America ex rel.) Saris
Ven-A-Care of the Florida Keys, Inc.,)
et al. v. Boehringer Ingelheim Corp.,)
et al., Civil Action No. 07-10248-PBS)
-----X

VIDEOTAPED DEPOSITION OF
THE VERMONT DEPARTMENT OF HEALTH by ANN RUGG

Montpelier, Vermont

Monday, December 15, 2008

9:00 a.m.

Henderson Legal Services, Inc.

202-220-4158

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Montpelier, VT

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<p>1 APPEARANCES</p> <p>2</p> <p>3 On behalf of Dey, Inc., Dey L.P., Inc. And</p> <p>4 Dey, L.P.:</p> <p>5 SUNG W. KIM, ESQ.</p> <p>6 Kelley Drye & Warren LLP</p> <p>7 101 Park Avenue</p> <p>8 New York, NY 10178</p> <p>9 212-808-7962</p> <p>10 sukim@kelleydrye.com</p> <p>11</p> <p>12</p> <p>13 On behalf of the United States of America:</p> <p>14 JAMES J. FAUCI, ESQ.</p> <p>15 Assistant United States Attorney</p> <p>16 United States Courthouse</p> <p>17 1 Courthouse Way</p> <p>18 Suite 9200</p> <p>19 Boston, MA 02210</p> <p>20 617-748-3298</p> <p>21 jeff.fauci@usdoj.gov</p> <p>22</p>	<p>1 INDEX</p> <p>2</p> <p>3 WITNESS: ANN RUGG PAGE</p> <p>4 Examination By Mr. Kim..... 008</p> <p>5 Examination By Ms. Geisler..... 324</p> <p>6 Examination By Mr. Fauci..... 347</p> <p>7 Examination By Mr. Kim..... 380</p> <p>8</p> <p>9</p> <p>10 EXHIBITS</p> <p>11 NUMBER DESCRIPTION PAGE</p> <p>12 Exhibit Rugg 001 - Notice of Deposition..... 012</p> <p>13 Exhibit Rugg 002 - Westlaw, 42 C.F.R. Section</p> <p>14 447.204..... 044</p> <p>15 Exhibit Rugg 003 - OVHA Provider Enrollment.... 065</p> <p>16 Exhibit Rugg 004 - Vermont Pharmacy Manual,</p> <p>17 1993..... 065</p> <p>18 Exhibit Rugg 005 - Universal Claim Form sample. 074</p> <p>19 Exhibit Rugg 006 - Title XIX, State Plan</p> <p>20 Amendments..... 088</p> <p>21 Exhibit Rugg 007 - OIG survey, 2001..... 129</p> <p>22 Exhibit Rugg 008 - OHVA Provider Manual..... 156</p>
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<p>1 APPEARANCES (CONTINUED)</p> <p>2 On behalf of the Witness:</p> <p>3 MICHAEL N. DONOFRIO, ESQ.</p> <p>4 EARL F. FECHTER, ESQ.</p> <p>5 Assistant Attorney General</p> <p>6 Office of the Attorney General</p> <p>7 109 State Street</p> <p>8 Montpelier, VT 05609</p> <p>9 802-828-6906</p> <p>10 mdonofrio@atg.state.vt.us</p> <p>11</p> <p>12</p> <p>13 On behalf of Abbott Laboratories, Inc.:</p> <p>14 CAROL GEISLER, ESQ. (Via telephone.)</p> <p>15 Jones Day</p> <p>16 77 West Wacker</p> <p>17 Chicago, IL 60601-1672</p> <p>18 312-269-4117</p> <p>19 cgeisler@jonesday.com</p> <p>20</p> <p>21 ALSO PRESENT: Cindy LaWare</p> <p>22 Andy Hoffman, Videographer</p>	<p>1 EXHIBITS (CONTINUED)</p> <p>2 NUMBER DESCRIPTION PAGE</p> <p>3 Exhibit Rugg 009 - 1986 MAC list..... 170</p> <p>4 Exhibit Rugg 010 - 10/15/86 letter to HCFA..... 175</p> <p>5 Exhibit Rugg 011 - Survey, 1989..... 189</p> <p>6 Exhibit Rugg 012 - MAC list, 2002..... 194</p> <p>7 Exhibit Rugg 013 - State MAC information..... 201</p> <p>8 Exhibit Rugg 014 - University Rhode Island</p> <p>9 study..... 207</p> <p>10 Exhibit Rugg 015 - Westlaw 18 V.S.A. Section</p> <p>11 4605..... 215</p> <p>12 Exhibit Rugg 016 - CBO Study, July 1998..... 219</p> <p>13 Exhibit Rugg 017 - Memo to Regional</p> <p>14 Administrators, 1994..... 226</p> <p>15 Exhibit Rugg 018 - Memo re: Arkansas Amendment. 229</p> <p>16 Exhibit Rugg 019 - Reimbursement Methodology,</p> <p>17 Draft..... 238</p> <p>18 Exhibit Rugg 020 - Report to Congress, June</p> <p>19 1994..... 242</p> <p>20 Exhibit Rugg 021 - OHVA Medicaid Generic</p> <p>21 Reimbursement Reductions and</p> <p>22 Dispensing Fee Study Jan 07. 252</p>

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<p style="text-align: right;">Page 7</p> <p>1 PROCEEDINGS</p> <p>2</p> <p>3 VIDEOGRAPHER: We are now recording and</p> <p>4 on the record. My name is Andy Hoffman. I am a</p> <p>5 certified legal video specialist on behalf of</p> <p>6 Henderson Legal Services. Today is December 15,</p> <p>7 2008, and the time is 8:58 a.m. This is the</p> <p>8 deposition of Ann Rugg, In Re: Pharmaceutical</p> <p>9 Industry Average Wholesale Price Litigation.</p> <p>10 This deposition is being taken at 109 State</p> <p>11 Street, Montpelier, Vermont. The court reporter</p> <p>12 is Jane Eaton of Henderson Legal Services.</p> <p>13 Counsel will please state their appearances and</p> <p>14 the court reporter will administer the oath.</p> <p>15 MR. KIM: Sung W. Kim. I am</p> <p>16 representing the Dey entities in this case.</p> <p>17 MR. FAUCI: Jim Fauci here on behalf of</p> <p>18 United States.</p> <p>19 MR. DONOFRIO: Mike Donofrio here on</p> <p>20 behalf of the witness.</p> <p>21 MR. FECHTER: Earl Fechter here on</p> <p>22 behalf of the witness.</p>	<p style="text-align: right;">Page 9</p> <p>1 A. I do.</p> <p>2 Q. And do you also understand that if this</p> <p>3 case goes to trial, you can be called as a</p> <p>4 witness for any of the parties present here?</p> <p>5 A. I do.</p> <p>6 Q. Just to go over some ground rules. Now</p> <p>7 if there's a question pending and you need a</p> <p>8 break, please let me know and I'll try to</p> <p>9 accommodate you.</p> <p>10 A. Okay.</p> <p>11 Q. I'd also ask that we try not to speak</p> <p>12 over one another for the sake of the record. And</p> <p>13 if you could, just let me finish my question</p> <p>14 before you answer and I'll do the same to let you</p> <p>15 finish your answer before I ask another question.</p> <p>16 A. Okay.</p> <p>17 Q. I also ask that you answer questions</p> <p>18 verbally rather than with a nod or with a head</p> <p>19 shake.</p> <p>20 A. I understand.</p> <p>21 Q. So that your response can be</p> <p>22 transcribed. From time to time, your attorney</p>

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<p style="text-align: right;">Page 306</p> <p>1 A. I see, okay.</p> <p>2 Q. In your understanding of spread, does</p> <p>3 spread generally mean the spread between AWP and</p> <p>4 AAC?</p> <p>5 A. AAC here being defined as what?</p> <p>6 Q. Actual Acquisition Cost. Well, let me</p> <p>7 rephrase the question then. What is your</p> <p>8 understanding of spread?</p> <p>9 A. Well, that there are discounts that are</p> <p>10 recognized discounts in the business. There</p> <p>11 might be things like prompt pay discounts or</p> <p>12 volume discounts or so there's the difference</p> <p>13 between what the Average Wholesale Price is and</p> <p>14 whatever discounts may be available as it reaches</p> <p>15 the pharmacy.</p> <p>16 Q. So --</p> <p>17 A. So I was just saying that that is why</p> <p>18 Vermont and other states apply a discount to AWP.</p> <p>19 Q. So the spread would be, would you say,</p> <p>20 or would you agree that the spread would be the</p> <p>21 difference between the AWP and the net price</p> <p>22 that's paid by providers?</p>	<p style="text-align: right;">Page 308</p> <p>1 Acquisition Cost?</p> <p>2 A. Using an expression that is expressly</p> <p>3 decided here.</p> <p>4 Q. Yes. What is your -- what is Vermont</p> <p>5 Medicaid's understanding of actual acquisition</p> <p>6 costs?</p> <p>7 A. If you're -- I'm torn because there's</p> <p>8 big letters here, the AAC.</p> <p>9 Q. Does Vermont's understanding of Actual</p> <p>10 Acquisition Cost include these discounts that you</p> <p>11 were talking about, prompt pays, volume</p> <p>12 discounts?</p> <p>13 MR. FAUCI: Objection to form.</p> <p>14 THE WITNESS: Uh-hum. Vermont does</p> <p>15 assume that there would be some discount off</p> <p>16 Average Wholesale Price in the aggregate across</p> <p>17 the business, yes.</p> <p>18 BY MR. KIM:</p> <p>19 Q. So Vermont's understanding as AWP does</p> <p>20 not equal Actual Acquisition Cost?</p> <p>21 A. That's correct.</p> <p>22 Q. And when did Vermont come to this</p>
<p style="text-align: right;">Page 307</p> <p>1 A. It certainly would be part of it, yes.</p> <p>2 I mean, we haven't talked about all possible</p> <p>3 components, but yes.</p> <p>4 Q. What other components are you?</p> <p>5 A. That's what I'm just -- I'm saying, you</p> <p>6 know, that I recognize that there are discounts</p> <p>7 that are available for things like paying</p> <p>8 promptly or being a volume purchaser or, you</p> <p>9 know, what is it, affiliated relationships like</p> <p>10 stores will have with a distributor. So there</p> <p>11 are discounts in there. So I would say that's</p> <p>12 the spread, the discounts that are available</p> <p>13 between what the wholesale price and what price</p> <p>14 they can secure between the -- before it reaches</p> <p>15 the pharmacy.</p> <p>16 Q. Okay. And what is your understanding</p> <p>17 of net price or Actual Acquisition Cost?</p> <p>18 A. Well, I can't say in the reading of the</p> <p>19 whole of this.</p> <p>20 Q. Well, let's disregard --</p> <p>21 A. Yeah, okay.</p> <p>22 Q. What is your understanding of Actual</p>	<p style="text-align: right;">Page 309</p> <p>1 understanding that Average Wholesale Price does</p> <p>2 not equal Actual Acquisition Cost?</p> <p>3 A. I can't tell you the moment it dawned</p> <p>4 on them. But the reflection of a discount</p> <p>5 against AWP is a reflection of that assumption.</p> <p>6 Q. Could that have been in 1989?</p> <p>7 A. I don't know.</p> <p>8 Q. Now we discussed briefly OIG reports</p> <p>9 earlier today?</p> <p>10 A. Yes.</p> <p>11 Q. And did you know that in 1997 OIG</p> <p>12 published a report which reported about a 45</p> <p>13 percent discount that pharmacies were paying off</p> <p>14 of AWP?</p> <p>15 A. I am not aware of that.</p> <p>16 Q. On national average?</p> <p>17 A. I'm not aware of that.</p> <p>18 Q. Could this report have been viewed by</p> <p>19 any other people at Vermont Medicaid?</p> <p>20 A. It might very well have been.</p> <p>21 Q. Mark this as next exhibit.</p> <p>22 (Exhibit Rugg 027 marked for</p>

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